

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

BENNETT, et al.,	)	
	)	
Petitioners,	)	<b>Consolidated Case No. 01-3-0022c</b>
	)	
v.	)	<b>(Bennett)</b>
	)	
CITY OF BELLEVUE,	)	<b>ORDER FINDING</b>
	)	<b>COMPLIANCE and</b>
Respondent.	)	<b>RESCINDING INVALIDITY</b>
	)	

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**I. PROCEDURAL HISTORY**

On April 8, 2002, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its Final Decision and Order (the **FDO**) in the above captioned case. The Board's FDO found that the City of Bellevue's Ordinance No. 5308 **did not comply** with the requirements of RCW 36.70A.070(6)(b) and was not guided by and substantially interfered with the fulfillment of RCW 36.70A.020(12). The Board entered a **determination of invalidity**.

On June 7, 2002, the Board issued "Order Granting Certificate of Appealability." This Order authorized that the Board's FDO be directly reviewed by the Court of Appeals.

On July 31, 2002, following briefing<sup>1</sup> and a compliance hearing the Board issued its "Order Finding Continued Noncompliance and Invalidity and Scheduling a Second Compliance Hearing."

On August 23, 2002<sup>2</sup> the Honorable Donald D. Haley, of King County Superior Court, issued an "Order Granting Stay" (**Stay**). This Order stayed the Board's 4/8/02 FDO pending resolution of the appeal of the matter. The City of Bellevue was also enjoined from applying Ordinance No. 5308.

On October 3, 2002, the Board acknowledged the Superior Court's Stay and issued an "Order Striking Second Compliance Hearing." This Order indicated that the Board would "take no further action in this case pending resolution of judicial review." 10/3/02 Order, at 3.

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<sup>1</sup> Briefing occurred both prior to the compliance hearing and after the compliance hearing.

<sup>2</sup> The Board received a copy of the "Order Granting Stay" on September 20, 2002.

On December 15, 2003, the Court of Appeals of Washington, Division 1, issued its decision in *City of Bellevue v. East Bellevue Community Municipal Corporation*, 119 Wash. App. 405, 81 P.3d 148, (2003), (*City of Bellevue*). The Court “affirm[ed] the Board’s conclusion that the ordinance [Ordinance No. 5308] failed to conform to the GMA’s concurrency requirements, and is therefore invalid.” *City of Bellevue*, at 415.

On September 29, 2004, the Board received “Mandate – King County Superior Court,” (**Mandate**) which states,

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division 1, filed on December 15, 2003, became the decision terminating review of this court in the above entitled case on September 27, 2004. An order denying a petition for review was entered in the Supreme Court on September 8, 2004. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

Mandate, at 1.

On January 24, 2005, the Board issued a “Notice of Pre-compliance Hearing Conference” (**PCHC**); the PCHC was set for 10:00 a.m. February 3, 2005 at the Board’s offices.

On February 1, 2005, the Board received the City of Bellevue’s “Third Statement of Actions Taken to Comply” (**SATC3**).

On February 3, 2005, the Board held the PCHC at the Board’s offices. Board member Edward G. McGuire, presiding officer, convened the PCHC. Board member Bruce C. Laing also attended. Elaine L. Spencer appeared for Respondent City of Bellevue. J. Richard Aramburu appeared for Petitioner Bennett.

After briefly discussing the Ordinance that the City of Bellevue adopted in response to the Court of Appeal decision and the Board’s FDO, the parties agreed to segue into a compliance proceeding.

Ms. Spencer briefly explained the effect of Ordinance No. 5555, indicating that it was adopted to comply with the Court’s decision and Board’s FDO. Mr. Aramburu concurred.

## **II. DISCUSSION**

The Board’s April 8, 2002 Final Decision and Order in CPSGMHB Case No. 01-3-0022c found that the City of Bellevue’s adoption of Ordinance No. 5308 [adding an ninth exemption to the City’s concurrency regulations – Bellevue City Code (**BCC**) 14.10.020(I) – exemptions] **did not comply** with the requirements of RCW 36.70A.070(6)(b) and was not guided by and substantially interfered with the fulfillment of goal 12 [RCW 36.70A.020(12), meriting a **determination of invalidity**. See FDO, at

17-18. Division 1 of the Court of Appeals affirmed the Board's FDO and the Supreme Court denied review. Therefore, the City must take action to comply with the GMA.

The SATC3 indicates that in response to the decisions of the Board and the Courts, the City adopted Ordinance No. 5555, on November 1, 2004. Further, Ordinance No. 5555, "repeals Ordinance No. 5308 and amends BCC 14.10.020 to remove paragraph 9." Paragraph 9 of BCC 14.10.020(I) was the noncompliant and invalid exemption.<sup>3</sup> See SATC3, at 1-2, and Ordinance No. 5555, Section 1, at 1-2.

The Board finds and concludes:

1. The Board's 4/8/02 FDO found the City of Bellevue's Ordinance No. 5308 noncompliant with the goals and requirements of the GMA. The FDO directed the City to comply with the goals and requirements of the GMA, specifically related to RCW 36.70A.070(6)(b) and .020(12). FDO, at 17-18.
2. The Courts of Washington have completed their review of the Board's decision and affirmed the Board's 4/8/02 FDO. Mandate, at 1.
3. On November 1, 2004, the City of Bellevue adopted Ordinance No. 5555. SATC3, Attachment A.
4. Ordinance No. 5555 repeals Ordinance No. 5308 and amends the BCC to remove the "concurrency" exemption added by Ordinance No. 5308. SATC3, at 1-2 and Ordinance No. 5555, Section 1, at 1-2.
5. The City of Bellevue's enactment of Ordinance No. 5555, repealing this exemption **complies** with the goals and requirements of the GMA, specifically RCW 36.70A.070(6)(b) and .020(12).
6. The City's adoption of Ordinance No. 5555 also removes substantial interference with the fulfillment of goal 12. Therefore the Board will **rescind** the determination of invalidity.
7. Therefore, the Board will enter a **Finding of Compliance** in *Bennett, et al., v. City of Bellevue*, CPSGMHB Case No. 01-3-0022c.

### **III. ORDER**

Based upon the Board's review of the GMA, the Board's Rules of Practice and Procedure, the April 8, 2002 FDO, the decisions of the Court on this matter, the City's SATC3, Ordinance No. 5555, the statements of the participating parties at the compliance hearing, and having deliberated on the matter, the Board ORDERS

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<sup>3</sup> The exemption was for Neighborhood Shopping Center Redevelopment Projects. See SATC3, and Ordinance No. 5308.

- The City of Bellevue's adoption of Ordinance No. 5555 **complies** with RCW 36.70A.070070(6)(b) and .020(12), as interpreted in the Board's April 8, 2002 Final Decision and Order.
- The Board **rescinds** the determination of invalidity in *Bennett, et al., v. City of Bellevue*, CPSGMHB Case No. 01-3-0022c.
- The Board enters a **Finding of Compliance** for the City of Bellevue in *Bennett, et al., v. City of Bellevue*, CPSGMHB Case No. 01-3-0022c.
- CPSGMHB Case No. 01-3-0022c is **closed**.

So ORDERED this 3<sup>rd</sup> day of February 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD<sup>4</sup>

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Bruce C. Laing, FAICP  
Board Member

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Edward G. McGuire, Esq., AICP  
Board Member

Note: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion of reconsideration.

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<sup>4</sup> Board member Pageler did not participate in this matter.